

Annapolis, Md., November 27th, 1907.

The Board of Public Works met, this date, in the Executive Office in Annapolis. Present, Governor Warfield, Comptroller Atkinson and Treasurer Vandiver.

The Governor presented the following communication from Attorney General William S. Bryan, Jr.,

"Baltimore, Nov. 25, 1907.

Dear Sir:-

In answer to the Resolution of the Board of Public Works of Maryland requesting my opinion in writing "as to whether the Board of Public Works should act on the request of the Baltimore and Ohio Railroad Company that it approve the Railroad Company's plans for the proposed new bridge over the Susquehanna River, before said plans have been approved by the engineering authorities of the United States Government" I beg to say:

Section 264 of Article 23 of the Code of Public General Laws of 1904 (being Chapter 242 of the Acts of 1876) provided that whenever the line of any railroad company existing at the time or which might thereafter be organized under Article 23 of the Code shall cross any canal or any navigable waters of this State the Railroad shall file with the Board of Public Works the plan of the bridge and other fixtures for crossing such canal or navigable water, and that if the Board of Public Works shall approve the said plans it shall notify the Railroad Company in writing.

The Act also provided for what course the Railroad Company may pursue if the Board of Public Works should decline to approve the plans.

Section 119 of the same Article of the Code of 1904 provides that no bridge shall be erected on a navigable river unless authorized by an Act of the General Assembly.

By Chapter 223 of the Acts of 1882 the Baltimore and Ohio Railroad Company were authorized to build over the Susquehanna River the bridge which it is now proposed to improve and double track. This Act provides that "said Company, before constructing any bridge across the Susquehanna River or Tide-Water Canal, shall first receive the approval of the Board of Public Works of the plan and character of bridge to be constructed; and the said Board shall be authorized to prescribe all necessary conditions for the construction and use of said bridge so as not to impede navigation."

This Act, I think, is a compliance with Section 119 of the Code of 1904, and authorizes and requires the Board of Public Works to consider the plans for the new bridge submitted by the officers of Baltimore and Ohio Railroad.

Nowhere in this Statute nor in the Maryland Code is it intimated that the approval of the plans by the Board of Public Works shall be preceded by any action by the Federal Engineers.

Congress for the very proper purpose of protecting navigation has provided that no bridge shall be built over a navigable stream until the plans for it have been approved by the Secretary of War and the Chief of Engineers.

This is entirely independent of the action of the State authorities.

The Supreme Court has held that under existing legislation, the right to erect a structure in a navigable water of the United States, wholly within the limits of a State, depends upon the concurrent or joint assent of the State and National Governments.

Cummings V. Chicago, 188 U. S. 410.

I understand that the Engineer Officers of the United States Government have taken the position that they can not be called on to approve the plans of any bridge over the navigable waters within the limits of any State until after the State authorities have done everything requisite to give the builders of the Bridge the assent of the State to the erection of the same.

I therefore think that the Board of Public Works should at this time consider the plans for this bridge submitted to it by the Baltimore and Ohio Railroad Company, and if it approves those plans, the Board should so signify in writing so that the Railroad Company may submit the same to the United States Government Engineer Officers.

I enclose the papers submitted to me by Mr. Hart, Acting Secretary of the Board of Public Works, and also a letter written to me by Mr. Hugh L. Bond, Jr., General Counsel of the Baltimore and Ohio Railroad, and an extract from the minutes of the meetings of the Board of Public Works in 1883, when the approval of the present bridge of the Railroad Company over the Susquehanna River was under consideration.

It appears from these minutes that the plans for the original bridge were approved on condition that the Railroad maintain during the season of open navigation a tug or tow boat at the bridge and

perform certain specified services free of charge for sailing vessels going under said bridge.

I would suggest that the approval of the new plans be made (if the plans are satisfactory to the Board) under the same conditions as the original approval of the former plans was made, -unless the Board of Public Works, in its discretion, sees fit to waive such conditions.

If the Board of Public Works determines to approve the plans for the bridge submitted by the Engineers of the Baltimore and Ohio Railroad Company and at the same time desires to attach to its approval the same conditions which the former Board of Public Works attached to the approval of the plans for the original bridge in 1883, I would advise that the order approving the plans be passed in the form following:

"ORDERED, by the Board of Public Works of Maryland, that the plan and character of the double-track railroad bridge to be constructed by The Baltimore and Ohio Railroad Company for its Philadelphia Branch, across the Tidewater Canal and the Susquehanna River, a plan of which was formally submitted to this Board with the application of said Railroad Company on October 7th, 1907, be and the same are hereby approved, with the proviso and upon the condition, however, that the location and plan of Bridge be submitted to and approved by the Chief of Engineers and by the Secretary of War before construction is commenced, and that any modification or change of said plan required or authorized by the Chief of Engineers or Secretary of War be submitted for the action of this Board thereon before construction is commenced in accordance therewith; and this approval of said plans is upon the further condition that the Baltimore and Ohio Railroad Company comply with the provisions of Chapter 223 of the Acts of 1882 and with all the requirements and conditions in regard to the maintenance and use of a tug or tow boat at said bridge set forth in the approval of the original plans for the original bridge there built, in the minutes of the meetings of the Board of Public Works in 1883."

I will be glad to explain orally to the members of the Board of Public Works anything in this letter which I have not made clear to them.

Very respectfully,  
(signed) William S. Bryan, Jr.  
Attorney General.

Hon. Edwin Warfield.

Upon motion of Dr. Atkinson, seconded by General Vandiver, the Board passed the order given in the Attorney General's letter, approving the plans &c., of the Baltimore and Ohio Railroad Company.

The Governor exhibited to the Board a statement of the distribution by him of the fund arising from the sale of the old Comptroller's building and a small lot of personal property amounting to \$1600 in payment for work done in grading the State House grounds and laying new cement walks &c., which, upon motion, was approved by the Board.

Thos. McGuckian & Son, Grading State House Hill,	\$400.00
" " " " Paving and grading State House	
Grounds,	250.00
Fred Stehle, Grading and filling site of old Comptroller's Office,	340.00
Thos. McGuckian & Son, Granite Curb at state House,	210.00
" " " " Contract for Grading,	250.00
" " " " on " " "	84.25
Chas. W. Haslup, Refund of money paid by Superintendent in Grading State House Hill,	152.75
Total -----	1687.00

On motion of the Comptroller, seconded by the Treasurer, the Governor was authorized to adjust and settle the bill of Langdon and Gittings, Landscape Engineers for plans and designs for improving the State House Grounds.

The Governor reported to the Board that he has assigned four rooms in the N. E. Corner of the Annex to the State House on the lower floor for offices for the Shell Fish Commission and his action was, on motion, approved by the Board.

The Governor submitted the following letter from Adjutant General Riggs together with a lease for Fort McHenry executed by the Secretary of War to the State of Maryland.

"November 25, 1907.

To the Honorable,

The Board of Public Works,

Annapolis, Md.

Gentlemen;

I have the honor to enclose herewith for your consideration the lease for Fort McHenry made by the Secretary of War to the State of Maryland.

As you probably know I obtained this lease principally for two reasons--to prevent the reservation from being used as a cattle quarantine or other objectionable purposes, and for the benefit of the Maryland National Guard and particularly for the Naval Brigade.

We are at present operating under the license, and the Naval Brigade will shortly take possession of the new wharf built by the City of Baltimore for this purpose on the reservation. The State is now under no expense on this account, and as you will see very little expense will be entailed, even when the reservation is taken over, under the lease, by reason of the abandonment of the post by the artillery.

The City of Baltimore is desirous of getting possession of the rights of the State in this property so that it may be used as a park, and will probably ask the next General Assembly to have the necessary legislation for this purpose.

I have had considerable correspondence with the Mayor of Baltimore City and the Park Commissioners with regard to the matter, but up to the present time have reached no conclusion as to the ultimate disposition of this property, which is satisfactory to all.

It seems to me that the best thing for the State would be for Congress to make Fort McHenry a national park, and I shall recommend in my report on January 1st, that Maryland representatives in Congress be asked to have a bill passed making an appropriation for repairing the old fort and for maintaining the reservation perpetually as a monument to the Maryland Troops in the War of 1812, and in commemoration of the birth of the "Star Spangled Banner."

In order that the State may be in a position to act legally no matter what disposition they may see fit to make of the reservation, I respectfully request that my action in accepting this lease from the War Department be officially confirmed by the Board of Public Works.

Very respectfully,

Clinton L. Riggs,

Major General, Adjutant General."

The Adjutant requested that this lease be accepted on the part of the State by the Board of Public Works, whereupon, on motion of the Comptroller, seconded by the Treasurer, the following endorsement was made on the original lease.

THIS LEASE made between the Secretary of War, of the first part, and THE STATE OF MARY, of the second part, WITNESSETH; That the Secretary of War, by virtue of the authority conferred on him by an Act of Congress, approved July 28th, 1892, entitled "An Act authorizing the Secretary of War to lease public property in certain cases", and in consideration of the yearly rent of One Dollar (\$1.00), payable in advance on the first day of April, in each and every year during the continuance of this lease, hereby leases to the party of the second part, hereinafter designated as the lessee, for the term of of five (5) years, beginning on the first day of April 1907, or as soon thereafter as the Post of Fort McHenry, Maryland, shall be vacated by the United States troops, the following-described premises or property, viz: The Military Reservation of Fort McHenry, Maryland, except the following specified buildings, to-wit: Ordnance Store-house, building number 39; Enlisted Men's Barracks, buildings number 1; Noncommissioned Staff Officers Quarters, buildings number 20, 31, 32, 33; Scale House, building number 30; Quartermaster Stables, building number 22; and further excepting the wharf which may be used by the lessee, subject to such regulations and restrictions in the interest of good order and discipline, and for the convenient joint use of the parties hereto, as the Commanding Officer, Artillery District of Baltimore, may prescribe.

The party of the first part reserves the right to use the roads and walks, the sewer and water-supply systems without charge for repair or maintenance; and the right to contract for the delivery of water through the post water system to any part of the reservation; and shall not be liable for any charges for the lighting system except in quarters, stables and ordnance store-house actually occupied by the United States.

The lessor shall provide meters at the quartermaster stables and at the wharf, and the lessee shall pay for all water used on the reservation except for that used at the aforesaid stables and by quartermaster and artillery boats at the wharf, and 5,000 gallons per month for each noncommissioned officers quarters and 50,000 gallons per month for barrack building number 1, while occupied by the lessor. At any time the lessor may relinquish any of the buildings reserved herein, upon due notice to the lessee.

And the lessee hereby covenants to pay to the United States the yearly rent above reserved, on the date above mentioned; that this lease shall be revocable at will by the Secretary of War; and to pay to the United States on demand any sum which may have to be expended after the expiration, relinquishment, or revocation of this lease to put the said premises or property in as good condition for use by the United States as it is at this date, reasonable wear and tear excepted; but nothing in this lease shall be construed as requiring the lessee to assume more than custody and police protection of Government buildings not used by it---the maintenance of such buildings to be under the direction and at the expense of the lessor.

And it is further agreed that after the expiration, relinquishment, or revocation of this lease the lessee shall remove the buildings and other property which it may have on the said premises, within such time as the Secretary of War may indicate; and upon its refusal, neglect, or inability to remove the same the Secretary of War may cause them to be removed at the expense of the lessee; and no claim for damages against the United States, or any agent or officer thereof, shall be created by or made on account of such removal.

Prior to this lease becoming operative, a License, revocable at will by the Secretary of War, is hereby given to said lessee to use the wharf, the drill ground, and the rifle range on said reservation, for the purposes of the Naval Brigade of the Maryland National Guard; provided, that such use shall not interfere with the use of the same by the lessor; and that such use shall be subject to such regulations and restrictions in the interest of good order and discipline, and the protection of public property on said reservation, as the Commanding Officer of Fort McHenry shall from time to time prescribe.

And under this License the lessee is authorized to extend said wharf at its expense, subject to the harbor regulations--such extension to be the property of the United States; to dredge a channel adjoining the south side of the wharf, and to make the necessary arrangements for mooring thereto the vessel or vessels of the Maryland Naval Brigade; to construct on the north side of said wharf a boat-shed so as not to interfere with the operation of quartermaster and artillery steamers; to dredge a pocket or basin between the said

wharf and Skinner's Ship Yard -- such dredging not to endanger the stability of the wharf or the reservation sea-wall; and to occupy said area with vessels and boats of the Maryland Naval Brigade; and to erect on or near the sea-wall such temporary boat-houses and shelters as may be desirable or necessary to the said Naval Brigade-- such structures not to endanger the stability of the said sea-wall.

And the lessee, under this License, shall not be charged for repairs or maintenance of lighting facilities except in the premises actually occupied by it, not for repair or maintenance of walks and roads, sewer or water systems, or for water, except such as may be used by its vessels, this amount to be determined by meter, and appropriate connections to be installed by the lessee, at its expense, and to become the property of the United States; such charges for water to be at the contract rate enjoyed by the United States.

This instrument is given in lieu of the combined lease and license, dated November 30, 1906, between the same parties, and covering the use and occupation of said reservation and property thereon; which said instrument on November 30, 1906, is hereby revoked.

Witness my hand and the Seal of the War Department this 12th, day of June, 1907.

Robert Shaw Oliver,

Acting Secretary of War.

This Instrument is also executed, on behalf of the lessee, by Clinton L. Riggs, Adjutant General of Maryland, thereunto lawfully authorized; this 23rd, day of October, 1907.

Signed, sealed and delivered                      Clinton L. Riggs, (Seal)  
in presence of                                      Adjutant General of Maryland.

William Baird.

Accepted upon the part of the State of Maryland by the Board of Public Works, this 27th, day of November, 1907.

Witness the hands and seals of the Governor, Treasurer and Comptroller of the State of Maryland.

Edwin Warfield, Governor, (Seal)  
Murray Vandiver, Treasurer, (Seal)  
Gordon T. Atkinson, Comptroller (Seal)

The Adjutant General requested that this lease be accepted on the part of the State by the Board of Public Works, whereupon, on motion of the Comptroller, seconded by the Treasurer, the endorsement as shown above was made on the original lease.



The Board, on motion, adjourned at 12.15.

*Oswald Gilghman*  
Secretary.